

The St. Johns Herald.

VOLUME 4.

ST. JOHNS, APACHE COUNTY, ARIZONA TERRITORY, THURSDAY, DECEMBER 8, 1887.

NUMBER 2

Albuquerque National Bank.

Albuquerque, New Mexico.

Capital - - - \$100,000.

Stockmen's Business a Specialty.

CORRESPONDENCE INVITED.

OFFICERS:

JOHN A. LEE, President.
S. M. FOLSOM, Vice-President.
W. S. STRICKLER, Cashier.

St. JOHNS DRUG COMPANY.

DEALERS IN

Drugs, Medicines, Paints and Oils,

NOTIONS, STATIONERY,

Druggist's Sundries and Toilet Articles.

Post Office Building,

ST. JOHNS, ARIZONA.

W. E. PLATT, Manager.

NEW STORE

OF

ALFRED RUIZ,

DEALER IN

GENERAL MERCHANDISE.

Commercial Street, St. Johns, Arizona.

HIGHEST MARKET PRICE PAID

—FOR—

WOOL, HIDES AND PELTS.

ARIZONA MERCANTILE CO.,

DEALERS IN

GENERAL MERCHANDISE

St. Johns, Arizona.

HIGHEST MARKET PRICE PAID FOR WOOL AND
HIDES, IN TRADE OR CASH.

Salt delivered to cattle or sheepmen on their ranges, at prices lower than can be obtained anywhere else, and with promptness and dispatch. Stockmen can depend upon the Salt being clean and in good condition. All orders promptly filled. Terms furnished on application. Correspondence solicited.

McCormick House.

Latently Enlarged. Neatly fitted up. New Furniture.
Comfortable Rooms. Terms Moderate.

Stable and Corral.

The best of hay and grain always on hand. Parties who wish can feed their own horses.

IMPORTANT OPINION.

ATLANTIC & PACIFIC RAILROAD
vs. J. T. LESUEUR.

BY JAMES H. WRIGHT, CHIEF JUSTICE.
In the District Court of the Third Judicial District of the Territory of Arizona, sitting at Prescott, in Yavapai County, to hear and determine causes arising under the Constitution and Laws of the United States; June term, 1887.

Atlantic and Pacific R. R. Co., plaintiff,
versus
J. T. Lesueur, Treasurer and ex-Officio Tax Collector of Apache County, Territory of Arizona, Defendant.
In Equity.

Mr. William C. Hazledine, Solicitor, and Messrs. Rush, Wells and Howard, Attorneys for Plaintiff.

Messrs. D. P. Baldwin and Harris Baldwin, Attorneys for Defendant.

This case was tried by the court upon an agreed stipulation as to the facts. The stipulation was written out by the reporter and accompanied the evidence. First, it is stipulated "that the evidence given in the case wherein the Atlantic & Pacific R. R. Co. is plaintiff, and Dionicio Baca, treasurer and ex-officio tax collector of Apache County, Territory of Arizona, is defendant, shall be applied to this case on its trial, together with all the arguments, so far as the same are applicable—that they may be applied and submitted in this case with the same force and effect as though submitted and set forth in the usual manner. The essential facts then, as adduced in that case and as stipulated in this, are as follows:

"That plaintiff is a railroad corporation, chartered by act of Congress, approved July 27th, 1866 and known as the Atlantic & Pacific R. R. Co. Section 2 of its charter granting to plaintiff its right of way through the public lands and exempting the same from taxation in the territories of the United States; that plaintiff, at the time of the assessment and levy of the taxes against it in Apache county for the year 1886, owned a large amount of real and personal property in said county, consisting of right of way, road bed, ties, rails, etc., from the eastern to the western line of the county, being a distance of 112 miles, together with a large number of depot buildings, freight houses, water tanks, coal shutes, dwellings, workshops, engine houses and eating houses and other buildings and improvements, etc., together with a large amount of personal property and rolling stock, and also a telegraph line along its right of way through the county, including poles, wire, batteries, office fixtures, etc.; that the headquarters of the western division of the Atlantic & Pacific R. R. Co., was and is at Albuquerque, New Mexico, with sub-divisional headquarters at Winslow, in Apache county, Arizona; that the plaintiff, at the time of assessment, had over one thousand box, passenger and freight cars and engines, which were being in constant use between Albuquerque, N. M., and Mohave, in California—a distance of 815 miles; that these cars were engaged in both a through and local freight and passenger traffic, stopping at the various stations for loading and unloading; that new cars were manufactured at Albuquerque, and at that point were the principal offices of plaintiffs, and its general repair and machine shops; that current and temporary repairs were made at Winslow, in Apache county, and that sub-divisions from there and other places, sent their reports and received their orders from chief headquarters at Albuquerque; that D. B. Robinson, general manager of the Atlantic & Pacific R. R. Co., filed with the assessor of Apache county, on the 28th day of April, 1886, a sworn list of the personal property owned by plaintiff in Apache county, claimed by the said Robinson to be subject to taxation in said county; that the assessor disregarded the values attached to the property in said list, and added to the list other

tions of the property that said Robinson had given; that said assessor returned the said list to the proper officers of Apache county; that when the Board of Equalization of Apache county met on the 1st Monday in July, 1886, they caused notice to be given to the said Robinson, general manager of the Atlantic & Pacific R. R. Co., as set forth in the complaint in this case; that plaintiff received said notice, and subsequently appeared before the Board of Equalization in regular session at the time specified in the notice, and filed with said Board a complaint and protest—complaining of and protesting against the action of said assessor, because none of the property of plaintiff was liable to taxation in said county, and asked said Board to set aside and hold for naught said assessment; that on the 30th day of July, after hearing the plaintiff on that day, said Board overruled said complaint and protest of plaintiff, and let the assessment list and valuation of plaintiff's property, as fixed by said assessor, stand, confirming and adopting the same; that no complaint was filed by Robinson with the Board; that plaintiff paid the amount of taxes as set forth in the complaint, and got a receipt therefor; that the said Apodaca was the duly elected and qualified assessor of Apache county; that plaintiff had never paid any telegraph tax in said county, and that its telegraph line is located upon its right of way for the length of its road through Apache county, and that it was used by plaintiff for the transactions of the business as a railroad, that this telegraph line was also used by the Western Union Telegraph Company under a contract with plaintiff—subject to and secondary to plaintiff; that the dwelling-cottages, mentioned in the assessment, are within what plaintiff claims as its station grounds, and that these cottages were used by employees of plaintiff; and that the headquarters of the cars, when not in actual use, were at Albuquerque, but, when in actual use were scattered along the line of the road.

Plaintiff, in its complaint herein, asked for and obtained a temporary injunction, restraining the defendant from collecting the taxes assessed and levied against it for the year 1886. The reasons urged by plaintiff why these taxes should not be collected are:

First, Because by section two of its charter, its right of way was exempt from taxation in the territories of the United States, and therefore all the improvements put thereon were also exempt.

Second, Because the domicile, or headquarters of plaintiff's western division were located at Albuquerque, New Mexico, and therefore its rolling stock—its tangible, personal property—had its situs there, and none of it should have been taxed in Apache county, Arizona.

Third, Because the assessment and levy of the taxes were illegal and void. There are minor questions involved, but these are the principal ones. We shall consider these questions in their order. First, were all the improvements put thereon exempt, because the right of way was exempt?

The plaintiff is a great corporation. It is one of four grand trunk lines of railway, reaching from the Mississippi to the Pacific coast. This company was originally organized with one hundred and seventy-seven incorporators, many of them among the wealthiest men, others, of the leading politicians of the country, and who, as we may suppose, have largely invested their capital in this immense property; with an empire of land donated to them and their successors forever, by the generous bounty of the government; with more than six hundred miles of this property within

Arizona and New Mexico; and with the still further bounty of the government displayed in not only giving them the right of way to the extent of two hundred feet in width and all necessary grounds for station buildings, etc., for their road, but in exempting this right of way from taxation in the territories of the United States; this corporation now comes in, by its gifted attorney and solicitor, and with great learning and power of logic, claims exemption from taxation for all its improvements put upon this right of way in Apache county—acknowledging its liability to pay taxes only on seven locomotives, tools, supplies, handcars, etc., and box-cars and cars used for dining and living in. Is this position tenable? Whether so or not, candor compels the admission, that it is assumed without subterfuge or evasion. The learned counsel for the plaintiff has, with forcible confidence, referred us to the noted decision of Chief Justice Wade, of Montana, in the case of the Northern Pacific R. R. Co. vs. Carland; 2d West Coast Reporter, page 326, and we have carefully noted its dictum and the numerous cases cited therein. Beyond question this is an able decision, and fully sustains the position of plaintiff's solicitor; but we think the learned judge mistakenly assumes that the rule of property exemption and the rule of property taxation are identical; i. e., that they are to be construed the same way. In other words, that whatever terms are sufficient, to carry property so as to render it subject to taxation, such terms are sufficient, at least no stronger terms are required to exempt such property from taxation. We are unable to agree with the learned judge in this position. In assuming that the grant by congress of the right of way, to the Northern Pacific R. R. Co., through the public lands, carried with it, as an easement, the right to the exclusive possession of the lands described, for the purpose of constructing a railroad and telegraph; to make excavations, cuts and fills in the ground; to construct thereon its roadbed, and lay ties and rails thereon, and to erect upon such lands, included in said right of way, all buildings, shops, water stations, depots, engine houses, freight houses, etc., as were necessary and suitable to be used in constructing and operating its railroad; and in assuming that this railroad, when thus constructed, becomes of the nature of real property; in all this we agree with him, but we cannot coincide with the conclusion that, because the 2nd section of the charter of the Northern Pacific R. R. Co., exempts its right of way from taxation, therefore it follows that all improvements put thereon are also exempt. Chief Justice Wade concludes his opinion on this point as follows: "The provisions contained in sec. 2 of the act incorporating plaintiff (the Northern Pacific R. R. Co.) declaring that 'the right of way, shall be exempt from taxation in the territories of the United States,' therefore carries with it and exempts from taxation in the territories, the roadbed, the ties and rails thereto attached, and all the station buildings, workshops, etc., necessary for the construction and for operating said railroad; and the assessment of taxation and the levy of tax thereon, of twenty miles of railroad in the County of Custer, as mentioned and described in the complaint, which description must include the roadbed, ties and rails, and all necessary buildings attached to the said, and annexed to the easement of the right of way—was unauthorized and is illegal and void." The opinion then proceeds with a critical and exhaustive argument to show that, even if the said railroad's property

sought to be collected, was not assessed and levied according to the requirements of the statutes of Montana. Can there be a doubt that this opinion misapplies true and correct principles appertaining to the abstruse title of the law of real property? Does it not confound the legal rules, governing the application of the assessment and collection of taxes to every species of property, requiring that it be done liberally and impartially, so as to equalize the public burdens, with the well settled rule, "that we must draw the line most rigidly when persons or corporations are seeking to escape taxation through legislative exemptions?" Are not the two rules—to construe liberally when you tax, so as to equalize the public burdens, and to construe strictly, rigidly, when exemption is sought—are they not really two different phases of the same general principle? Does not this opinion assume a legislative intent? Does it not by judicial implication supply what the act itself clearly does not impart? Will it do to say, because the improvements attached to the right of way, or easement, for purposes of taxation, become real estate, that therefore they necessarily become real estate for purposes of exemption? Will it be questioned that improvements erected upon land by a person in whom the title to such land does not rest, may be taxed, and the enforced payment of the tax made against the person owning the improvements regardless of a tax upon the land? Buildings and improvements erected upon land by a person other than the owner thereof are often treated as personal property for the purposes of taxation, Chapter 33, sec. 18, of the Compiled Laws of Arizona, 1877, requires the assessor to list at their cash value, all the improvements upon real estate, where the same is assessed to a person other than the owner of said real estate. The truth is, much of the permanent improvements and property of greatest value in this territory, are on land belonging to the government, and this is a species of property justly subject to taxation. No one would pretend that it ought to be exempt because the land is exempt. Hence, the supreme court of California, in People vs. Shearer, sec. 30, Cal. 645, says: "These possessions, then, are recognized as a species of property subsisting in the hands of the citizen. It is not the land itself, nor the title to the land, nor is it the identical estate held by the United States. It is not the pre-emption right, but it is the possession and valuable use of the land subsisting in the citizen. Why should it not contribute its proper share according to the value of the interest, whatever it may be, of the taxes necessary to sustain the government which recognizes and protects it?" Now, the great purpose of taxation is to equalize the public burdens, that these burdens, like the dew of heaven, may fall on all alike; and if, in the exercise of this great right of governmental sovereignty, it becomes necessary to modify or change ordinary property rules, it will be done, the competency of the taxing power to do so being unquestionable.

(Continued in our next.)

Jay Gould and Russell Sage are charged by lawyer De Lancy, of New York, with grand larceny in appropriating \$6,000,000 worth of railroad and telegraphic stock and bonds belonging to De Lancy's clients.

Seven United States Senators spent the summer in Europe. They were Palmer, Stockbridge, Hale, Frye, Spooner, Aldrich and Hawley.

The mail on the Atchison, Topoka and Santa Fe road was weighed lately for ten days and averaged